

Department of Homeland Security

§212.9

to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97-116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182))

[29 FR 12584, Sept. 4, 1964]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §212.7, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§212.8 Certification requirement of section 212(a)(14).

(a) *General.* The certification requirement of section 212(a)(14) of the Act applies to aliens seeking admission to the United States or adjustment of status under section 245 of the Act for the purpose of performing skilled or unskilled labor, who are preference immigrants as described in section 203(a) (3) or (6) of the Act, or who are nonpreference immigrants as described in section 203(a)(8). The certification requirement shall not be applicable to a nonpreference applicant for admission to the United States or to a nonpreference applicant for adjustment of status under section 245 who establishes that he will not perform skilled or unskilled labor. A native of the Western Hemisphere who established a priority date with a consular officer prior to January 1, 1977 and who was found to be entitled to an exemption from the labor certification requirement of section 212(a)(14) of the Act under the law in effect prior to January 1, 1977 as the parent, spouse or child of a United States citizen or lawful permanent resident alien shall continue to be exempt from that requirement for so long as the relationship upon which the exemption is based continues to exist.

(b) *Aliens not required to obtain labor certifications.* The following persons are not considered to be within the purview of section 212(a)(14) of the Act and do not require a labor certification: (1) A member of the Armed Forces of the United States; (2) a spouse or child accompanying or following to join his spouse or parent who either has a labor certification or is a nondependent alien who does not require such a certifi-

cation; (3) a female alien who intends to marry a citizen or alien lawful permanent resident of the United States, who establishes satisfactorily that she does not intend to seek employment in the United States and whose fiancé has guaranteed her support; (4) an alien who establishes on Form I-526 that he has invested, or is actively in the process of investing, capital totaling at least \$40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permanent residence, exclusive of the alien, his spouse and children. A copy of a document submitted in support of Form I-526 may be accepted though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in §204.2(j) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

[31 FR 10021, July 23, 1966; 31 FR 10355, Aug. 22, 1966, as amended at 34 FR 5326, Mar. 18, 1969; 38 FR 31166, Nov. 12, 1973; 41 FR 37566, Sept. 7, 1976; 41 FR 55850, Dec. 23, 1976; 47 FR 44990, Oct. 13, 1982; 48 FR 19157, Apr. 28, 1983]

§212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.

A derivative beneficiary who is the spouse or child of a qualified third or sixth preference or nonpreference immigrant and who is also a graduate of a medical school as defined by section 101(a)(41) of the Act is not considered to be an alien who is coming to the United States principally to perform services as a member of the medical profession. Therefore, a derivative third or sixth preference or nonpreference immigrant under section 203(a)(8) of the Act, who is also a graduate of a medical school, is eligible for an immigrant visa or for adjustment of status under section 245 of the Act, whether or not such derivative immigrant has passed Parts I and II of the